

HOUSE BILL 31 of the First Extraordinary Session
By Stulce

AN ACT to enact the "Tennessee Tax Reform Act of 1999" and to
amend Tennessee Code Annotated, Title 67.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. (a) Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by deleting in their entirety all sections in such part except for Sections 67-6-308, 67-6-322(a), (b), (c), (d), (e) and (f), 67-6-337 and 67-6-338.

(b) Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following new section:

Section ___. There is exempt from the tax levied by this chapter any sale or use which would otherwise be taxable pursuant to the provisions of this chapter but which would impose a tax that is invalid either under the commerce clause or the due process clause of the Constitution of the United States.

SECTION 2. Tennessee Code Annotated, Section 67-6-102(9), is amended by deleting from the first sentence the language "the retail price of which, for any such single article, exceeds two hundred fifty dollars (\$250)," and by deleting from the fourth sentence the language ", the retail price of which exceeds two hundred fifty dollars (\$250)".

SECTION 3. Tennessee Code Annotated, Section 67-6-102(13)(B), is amended by deleting the language ", the cost of which, for any such single article, exceeds one thousand dollars (\$1,000),".

SECTION 4. Tennessee Code Annotated, Section 67-6-102(24)(D), is amended by deleting the language "and each sale is in excess of five hundred dollars (\$500)" and the language "for sales in excess of five hundred dollars (\$500)".

SECTION 5. Tennessee Code Annotated, Section 67-6-206, is amended by deleting the section in its entirety.

SECTION 6. Tennessee Code Annotated, Section 67-6-207, is amended by deleting the section in its entirety.

SECTION 7. Tennessee Code Annotated, Section 67-6-209(a), is amended by placing a period after the words "deductions whatsoever" and by deleting the remainder of the sentence.

SECTION 8. Tennessee Code Annotated, Section 67-6-209, is further amended by deleting subsections (d), (e), (f) and (g) in their entirety.

SECTION 9. Tennessee Code Annotated, Section 67-6-216, is amended by deleting the section in its entirety.

SECTION 10. Tennessee Code Annotated, Section 67-6-217, is amended by deleting the section in its entirety.

SECTION 11. Tennessee Code Annotated, Section 67-6-218, is amended by deleting the section in its entirety.

SECTION 12. Tennessee Code Annotated, Section 67-6-219, is amended by deleting the section in its entirety.

SECTION 13. Tennessee Code Annotated, Section 67-6-224, is amended by deleting the section in its entirety.

SECTION 14. Tennessee Code Annotated, Section 67-6-225(b), is amended by deleting the subsection in its entirety.

SECTION 15. Tennessee Code Annotated, Section 67-4-804(a), is amended in subdivision (1) by deleting the semicolon ";" and substituting instead a period "." and adding the following language:

A taxpayer does not have "business earnings" if it is engaged exclusively in the buying, selling, or holding of securities on its own behalf and not as a broker, and its gains or losses from the sale or exchange of such securities are treated as gains or losses from the sale or exchange of capital assets as defined in section 1221 of the Internal Revenue Code of 1986, as amended. This subdivision expresses the legislative intent to implement and clarify the distinctions between business and nonbusiness earnings, as found in the Uniform Division of Income for Tax Purposes Act, as generally interpreted by states adopting the act;

SECTION 16. Tennessee Code Annotated, Section 67-4-804(a), is further amended by deleting subdivision (5) in its entirety and substituting instead the following:

(5) For purposes of the payroll factor of the statutory apportionment formula used by a taxpayer doing business both within and without Tennessee, and for purposes of adjustments to net earnings under § 67-4-805, "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services, and applies to any compensation arrangement, including whether paid directly or paid indirectly by invoice pursuant to a staff leasing arrangement with a staff leasing company or staff leasing group;

SECTION 17. Tennessee Code Annotated, Section 67-4-804(a)(7), is amended by deleting that portion of subdivision (7) from the beginning of the subdivision through the end of subdivision (7)(A), by substituting instead the following:

(7) "Doing business in Tennessee" or "doing business within this state" means any activity purposefully engaged in, within Tennessee, by any person, with the object of gain, benefit or advantage, consistent with the intent of the general assembly to

subject such persons to the Tennessee franchise and excise taxes to the extent permitted by the United States Constitution and the Constitution of Tennessee; provided, that any such person shall not be considered to be "doing business in Tennessee" or "doing business within this state" for purposes of this part and part 9 of this chapter solely because of any one of the following activities:

(A) Ownership of a limited partnership interest when the activities of such owner are limited as follows:

(i) The limited partner's only business activity in Tennessee is the holding of a limited partnership interest in a partnership located in or doing business in Tennessee; and

(ii) The limited partner has no right to exercise any power, management or control over the partnership, except such powers or capacities outlined in § 61-2-302 that limited partners may exercise without participating in the management or control of the partnership, and the limited partner, in fact, exercises no such power, management or control over the partnership.

SECTION 18. Tennessee Code Annotated, Section 67-4-804(a), is amended by deleting subdivision (8) in its entirety and substituting instead the following:

(8) "Financial institution" means a holding company, any regulated financial corporation, a subsidiary of a holding company or regulated financial corporation, or any other person that is carrying on the business of a financial institution. However, "financial institution" does not include insurance companies subject to tax under §§ 56-4-201 - 56-4-214;

SECTION 19. Tennessee Code Annotated, Section 67-4-804(a)(11), is amended by deleting subdivision (B) in its entirety and by substituting instead the following:

(B) The requirement of owning and managing ten (10) or more hospitals shall be met if on an aggregate basis ten (10) or more hospitals are owned and managed, including all hospitals owned and managed by members of the same controlled group, and including all hospitals owned and managed by any partnership or limited liability company included in the controlled group. The requirement of performing health care services for ten (10) or more hospitals shall be met if on an aggregate basis health care services are performed for ten (10) or more hospitals, including all hospitals owned and managed by members of the same controlled group, and including all hospitals owned and managed by any partnership or limited liability company included in the controlled group;

SECTION 20. Tennessee Code Annotated, Section 67-4-804(a), is amended by adding the following as new subdivisions to be appropriately designated:

() "Not-for-profit" means any person included under sections 401(a), 501(c), and 501(d) of the Internal Revenue Code;

() "Person" or "taxpayer" means every natural person, corporation, subchapter S corporation, limited liability company, general partnership, limited partnership, limited liability partnership, proprietorship, cooperative, joint stock association, business trust, regulated investment company, real estate investment trust, state-chartered or national bank, state or federally chartered savings and loan association, and any other entity or organization engaged in business.

() "Staff leasing arrangement" shall have the same definition as is set forth in § 62-43-103(a)(9);

() "Staff leasing company" shall have the same definition as is provided in § 62-43-103(a)(10); provided that, as used in this part, a staff leasing company must be licensed as a staff leasing company by the commissioner of the department of commerce and insurance pursuant to the provisions of § 62-43-108; and provided

further, that a staff leasing company does not include “captive leasing companies” as defined in § 62-43-120;

() “Staff leasing group” shall have the same definition as is provided in § 62-43-103(a)(11); provided that, as used in this part, a staff leasing company must be licensed as a staff leasing group by the commissioner of commerce and insurance pursuant to the provisions of § 62-43-108; and provided further, that a staff leasing group does not include “captive leasing companies” as defined in § 62-43-120;

SECTION 21. Tennessee Code Annotated, Section 67-4-804(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) It is the intent of the general assembly to tax persons which are subject to Tennessee franchise and excise taxes to the extent permitted under the state's constitutional power to tax. The foregoing provisions implement and clarify the distinctions between business and nonbusiness earnings, as found in the Uniform Division of Income for Tax Purposes Act, as generally interpreted by states adopting the act.

SECTION 22. Tennessee Code Annotated, Section 67-4-805, is amended by deleting the section in its entirety and substituting instead the following:

67-4-805. (a)(1) For a corporation, limited liability company treated as a corporation for federal purposes, or any other taxpayer required to file a federal income tax return on a federal form 1120 or any variation thereof, except for a corporation electing S corporation status under sections 1361-1363 of the internal revenue code, or a unitary business as is defined in § 67-4-804(a)(19), “net earnings” or “net loss” is defined as federal taxable income or loss before the operating loss deduction and special deductions provided for in sections 241-247 and 249 of the internal revenue code, and as adjusted by subsection (b) of this section.

(2) For a corporation electing subchapter S corporation status under sections 1361-1363 of the internal revenue code and filing a federal tax return for a subchapter S corporation (form 1120S or any variation thereof) with the internal revenue service, “net earnings” or “net loss” is defined as ordinary income determined under the applicable provisions of the internal revenue code, increased or decreased by items of income or expense specifically allocated to shareholders under the provisions of section 1366 of the internal revenue code, and as adjusted by subsection (b) of this section.

(3) For a unitary business, as is defined in § 67-4-804(a)(19), “net earnings” or “net loss” is defined as the combined net earnings or net loss as defined in subsection (a)(1) of this section for all members of the unitary group with all dividends, receipts and expenses resulting from transactions between members of the unitary group excluded when computing combined net earnings, and subject to the adjustments in subsection (b) on a combined basis. Financial institutions that form a unitary business shall file a combined return and pay tax on all operations of the unitary business. This return shall include the net earnings or net losses of all members of the unitary group even if some of the members would not otherwise be subject to taxation under this part.

(4) In the case of a partnership, limited liability company treated as a partnership for federal purposes, or any other person required to file a federal partnership return (form 1065 or any variation thereof), “net earnings” or “net loss” is defined as an amount equal to: (A) the amount of ordinary income or loss determined under the applicable provisions of the internal revenue code, increased or decreased by items of income or expense specifically allocated to partners under the provisions of sections 701-761 of the internal revenue code, including but not limited to guaranteed payments to partners; less: (B) the amount subject to self-employment taxes paid to each partner or member, but not in excess of seventy-two thousand dollars (\$72,000) for any one partner or

member, provided, however, this amount shall not create or increase any net loss; (C) as adjusted by subsection (b) of this section.

(5) In the case of a sole proprietorship, "net earnings" or "net loss" is defined as an amount equal to: (A) the amount of net profit or loss from a trade, business, farm or profession, determined by applicable provisions of the internal revenue code as is reported on federal form 1040 or any variation thereof, and appropriate schedules, including the amount of any gains or losses from the sale of assets held or used in the trade, business, farm or professional activity; less: (B) seventy-two thousand dollars (\$72,000), provided, however, this amount shall not create or increase any net loss; (C) as adjusted by subsection (b) of this section.

(6) In the case of a trust, estate, or any other person doing business in Tennessee and not covered in subdivisions 1 through 5 above, "net earnings" or "net loss" is defined as taxable income or loss determined under applicable provisions of the internal revenue code, excluding any net operating loss deduction or special deductions similar to those provided for in sections 241-247 and 249 of the internal revenue code, as adjusted by subsection (b) of this section.

(b) (1) There shall be added to a taxpayer's net earnings or net losses:

(A) Except in the case of financial institutions and insurance companies, an amount equal to the sum of compensation paid to employees which exceeds, for any one employee, seventy-two thousand dollars (\$72,000) per tax year. Any amount added under this subpart (A) shall not be reduced by net losses or carryovers thereof determined under subsection (a);

(B) Excise tax imposed by this state to the extent deducted in determining federal taxable income;

(C) Interest income from obligations defined in 26 U.S.C. § 103(a), reduced by allowable amortization including any interest expense disallowed for federal purposes pursuant to 26 U.S.C. §§ 265 and 291;

(D) Any deduction made pursuant to 26 U.S.C. §§ 611-617 to the extent the deduction when added with similar deductions in prior years exceeds the cost of the property;

(E) Any capital loss carrybacks or carryovers, arising in the course of a trade of business and deducted pursuant to 26 U.S.C. § 1212(a), provided, however, in the case of a proprietorship, capital losses from property not used in the business shall not be considered for this purpose; and

(F) Any expense or depreciation, permitted as a deduction in computing federal taxable income solely as a result of lease characterizations permitted under § 168 of the Economic Recovery Tax Act of 1981, which would not have been permitted in the absence of such act; it being the legislative intent that excise tax revenue not be reduced due to lease characterizations made for the purpose of transferring investment tax credits and depreciation allowances from one business entity to another.

(2) There shall be subtracted from the net earnings and losses:

(A) Dividends earned by a parent corporation from a subsidiary corporation where such parent owns eighty percent (80%) or more of the stock of the subsidiary;

(B) Any amount included in federal taxable income but not taxable under the laws of this state;

(C) (i) In the case of entities subject to the excise tax under prior law, any net operating loss incurred for fiscal years ending on or after January 15, 1984, and in the case of all other taxpayers, any net operating loss incurred for fiscal

years ending on or after July 1, 1999; "net operating loss" being defined as the excess of allowable deductions over total income allocable to this state for the year of the loss, and which may be carried over and allowed in succeeding tax years until fully utilized in the next succeeding taxable year or years in which the taxpayer has net income, but in no case for more than fifteen (15) years after the taxable year in which the net operating loss occurs. For fiscal years ending on or after July 15, 1990, in the case of a unitary business, as defined in § 67-4-804(a)(19), the net operating loss incurred in the current year shall be determined on a combined basis as specified in subdivision (a)(3) and, for tax years ending prior to July 15, 1990, any net operating loss incurred by a member of the unitary group which has been apportioned to Tennessee in a year prior to filing a combined return shall be allowed to the unitary group in succeeding tax years until fully utilized, but in no case more than seven (7) years after the taxable year in which the net operating loss occurs;

(ii) There shall be added to the net loss as determined for excise tax purposes, all nonbusiness earnings, all interest, dividends excluded from net earnings pursuant to this section and any other income excluded from net earnings pursuant to this section;

(D) A portion of the gain or loss of the sale or other disposition of property having a higher basis for Tennessee excise tax purposes than federal income tax purposes measured by the difference in the Tennessee basis and the federal basis;

(E) Any capital losses incurred during the fiscal year, arising in the course of a trade or business, and not deductible under 26 U.S.C. § 1211(a), provided, however, in the case of a proprietorship, capital losses from property not used in the business shall not be considered for this purpose;

(F) Any expense, other than income taxes, not deducted in determining federal taxable income for which a credit against the federal income tax is allowable;

(G) Any amount included in federal taxable income solely as a result of lease characterizations permitted under the Economic Recovery Tax Act of 1981, § 168, which would not have been permitted in the absence of such act;

(H) Any amount of depreciation or other expense which the taxpayer could have deducted in computing federal taxable income had it not made the election to enter into a lease transaction permitted under the Economic Recovery Tax Act of 1981, § 168, which would not have been permitted in the absence of such act; and

(I) An amount equal to the difference, if any, between the reserve for bad debts allowed under 26 U.S.C. §§ 585 and 593, as such section existed on December 31, 1986, and such reserve as it may have been modified subsequently.

SECTION 23. Tennessee Code Annotated, Section 67-4-806, is amended by deleting subsections (a), (b) and (c) in their entirety and by substituting instead the following:

(a)(1) Doing business in Tennessee by any taxpayer is hereby declared to be a taxable privilege. The excise tax imposed by this act is a tax on merchants, peddlers, and privileges as authorized by Article II, Section 28 of the Tennessee Constitution. The tax is an accrued tax and is imposed for the exercise of the specified privilege during the period that coincides with the tax year covered by the return required.

(2) All persons, except those having not-for-profit status, doing business in Tennessee shall, without exception other than as provided herein, pay to the commissioner of revenue annually, in addition to all other taxes, an excise tax equal to six percent (6%) of their net earnings for the next preceding fiscal year for business done in this state.

(b) Every such person, now or hereafter doing business within this state shall, as a recompense for the protection of its local activities and as compensation for the benefits it receives from doing business in Tennessee, pay the tax imposed by this part.

(c) The tax imposed by this part shall apply to every taxpayer whose business is being conducted by a receivership or trusteeship appointed by any court of competent jurisdiction and shall continue to accrue until such time as, in the case of an entity, such entity has been actually and legally dissolved or withdrawn from this state.

SECTION 24. Tennessee Code Annotated, Section 67-4-808, is amended by deleting subdivision (6) in its entirety and substituting instead the following:

(6) A hospital company filing a franchise/excise tax return on a combined basis as described in § 67-4-812, together with all members of its combined group filing with it, shall be allowed as a further credit against the combined annual franchise/excise tax imposed on the group remaining after application of the credit allowed under subdivision (5) an amount equal to four percent (4%) of the cost of medical supplies and medical equipment used by or placed in service by the members of the controlled group in this state during the tax year; provided, that the aggregate amount of the credit allowed to a taxpayer under subdivision (5), together with the credit allowed to a taxpayer under this subsection, shall not exceed nine million dollars (\$9,000,000) in any one (1) tax year. A corporation or other entity shall be deemed to have used or placed in service medical supplies and medical equipment used or placed in service by a partnership or limited liability company of which it is a partner or member if such corporation or entity is a member of the same controlled group, as defined in § 267(f)(1), Internal Revenue Code of 1986, as amended. The amount of the cost of such medical supplies and medical equipment which is attributed to and deemed to have been used or placed in service by such corporation or other entity shall be equal to the pro rata portion of the cost of medical supplies and medical equipment used or placed in service by the partnership or

limited liability company in the tax year. Such pro rata portion shall be determined based upon the corporation's or other entity's percentage of the profits and losses of such partnership or limited liability company during such tax year. As used in this subdivision, "medical equipment" has the same meaning as "major medical equipment" as defined in § 68-11-102(10), but without the limitation therein as to the cost thereof, and "medical supplies" means all apparatus, consumable products, appliances, and other tangible personal property, except drugs and medicines, used in provision of patient health care services, including all recordkeeping and documentation in connection with such services.

SECTION 25. Tennessee Code Annotated, Section 67-4-809, is amended by adding a new subsection (c) as follows:

(c) Nonbusiness sales shall not be included in the numerator or denominator of any apportionment formula.

SECTION 26. Tennessee Code Annotated, Section 67-4-811, is amended by deleting subsections (a) and (b) in their entirety and substituting instead the following:

(a) Except as may otherwise be provided in this part, all net earnings shall be apportioned to this state by multiplying the earnings by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor and the denominator of which is four (4).

(b) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period. For this purpose property shall not include a taxpayer's share of any specific property of a partnership or limited liability company in which such taxpayer has a partnership or membership interest. In the case of a sole proprietorship, "property" shall

not include any property or portion thereof not actually used in the proprietorship's business.

SECTION 27. Tennessee Code Annotated, Section 67-4-811(e), is amended by deleting the subsection in its entirety and substituting instead the following:

(e) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period. For this purpose compensation shall not include a taxpayer's share of any specific compensation of a partnership or limited liability company in which such taxpayer has a partnership or membership interest.

SECTION 28. Tennessee Code Annotated, Section 67-4-811(g), is amended by deleting the subsection in its entirety and substituting instead the following:

(g) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period. For this purpose total sales shall not include a taxpayer's share of any specific sales of a partnership or limited liability company in which such taxpayer has a partnership or membership interest.

SECTION 29. Tennessee Code Annotated, Section 67-4-811, is amended by adding a new subsection (j) as follows:

(j) Notwithstanding any provision of law other than §67-4-812 to the contrary, any person doing business in Tennessee, who licenses the use of patents, trademarks, tradenames, copyrights, or know-how, or other intellectual property to another person in Tennessee, and who is paid royalties or other income based on the sale of products or other activity in Tennessee by the licensee, shall source such income to Tennessee for purposes of its apportionment formula sales factor.

SECTION 30. Tennessee Code Annotated, Section 67-4-812, is amended by deleting subsections (a) through (d) in their entirety and substituting instead the following:

(a) If the tax computation, allocation or apportionment provisions of this part do not fairly represent the extent of the taxpayer's business activity in this state, or the taxpayer's net earnings, the taxpayer may petition for, or the department of revenue through its delegates may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) Separate accounting;

(2) The exclusion of any one (1) or more of the formula factors;

(3) The inclusion of one (1) or more additional apportionment formula factors which will fairly represent the taxpayer's business activity in this state; or

(4) The employment of any other method to effectuate an equitable computation, allocation and apportionment of the taxpayer's net earnings or losses that fairly represents the extent of the business entity's activities in Tennessee.

(b) If any factors are excluded from or added to the statutory apportionment formula, an appropriate change shall be made in the number used as the denominator of the fraction.

(c) (1) In any case of two or more persons, organizations, trades or businesses (whether or not incorporated and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the commissioner through delegates may distribute, apportion, or allocate income, deductions, credits, or allowances between or among such persons, organizations, trades or businesses, if the commissioner determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes, excessive use or abuse of exemptions, or to clearly reflect the income of such persons, organizations, trades or businesses. In addition, the commissioner through

delegates may require combined reports utilizing a common apportionment formula covering members of an affiliated group of corporations.

(2) The commissioner may disregard any entity created or transaction made which has no business purpose or is created or made with the primary purpose of evading either the federal income tax or the excise tax.

(3) For purposes of this subsection, "affiliated group" has the same meaning attributed to it by section 1504 of the internal revenue code.

(d) When another method of tax computation, allocation or apportionment as set out above has once been established, it shall continue in effect until changed or discontinued by the department. In the event that the department changes or discontinues a taxpayer's method of tax computation, allocation or apportionment, reasonable notice shall be given to the taxpayer affected and any such change or discontinuation in the method of tax computation, allocation or apportionment shall apply prospectively to the first and subsequent tax periods beginning on or after the date of such notice.

SECTION 31. Tennessee Code Annotated, Section 67-4-814(3), is amended by deleting the word "corporation" and substituting the word "taxpayer".

SECTION 32. Tennessee Code Annotated, Section 67-4-817, is amended by deleting the word "corporation's" and substituting instead the word "taxpayer's", deleting each occurrence of the word "corporation" and substituting instead the word "taxpayer", and by deleting the word "corporations" and substituting instead the word "taxpayers".

SECTION 33. Tennessee Code Annotated, Section 67-4-818, is amended by deleting the section in its entirety and by substituting instead the following:

(a) The commissioner is empowered and it is the commissioner's duty to collect the tax, together with penalty and interest, levied hereunder from any officer, stockholder, partner, member, principal, or employee of a taxpayer that is out of

business or has dissolved, liquidated, otherwise terminated at a time when it has refused or failed to pay the excise tax levied under this part, and any such officer, stockholder, partner, member, principal, or employee has received property belonging to the taxpayer, but such collection shall be limited to the value of the property received.

(b) The commissioner is empowered to certify to the secretary of state the name of any corporation which fails or refuses to file any statement or return or to pay any fee or tax herein required; however, no certification shall be issued until such statement, return, or tax has remained delinquent for a period of ninety (90) days.

(c) At the time of such certification to the secretary of state, the commissioner shall give notice to the corporation of the action taken. Thereupon, the charter of such corporation or its domestication in Tennessee shall stand as automatically dissolved or revoked and the secretary of state shall note such revocation or dissolution upon the secretary of state's records.

(d) At any time after the date of revocation or dissolution, such charter may be reinstated upon the filing of all reports and the payment of all fees, taxes, penalty and interest due the state; provided, that the title has not been taken by another corporation, and that proof is furnished sufficient to the commissioner that no third party will be injured by such reinstatement, unless such proof has been furnished sufficient to the secretary of state upon requesting reinstatement.

SECTION 34. Tennessee Code Annotated, Title 67, Chapter 4, Part 8, is amended by adding the following as a new section:

67-4-823. (a) This section shall apply only to accounting periods (tax years) ending on or after July 1, 1999, but before June 30, 2000.

(b) A return for the excise tax imposed by this act is not required for accounting periods ending on or before June 30, 1999.

(c) A taxpayer, not subject to prior excise tax law, that has an accounting period ending on or after July 1, 1999, shall file its first return for the excise tax imposed by this act based on such period. In the event the accounting period begins before July 1, 1999, and ends on or after July 1, 1999, the excise taxes computed on the return shall be prorated by a ratio, the denominator of which is the number of days in the accounting period and the numerator of which is the number of days from and including July 1, 1999, until the close of the accounting period.

(d) For a taxpayer subject to excise tax under prior law, in the event the accounting period begins before July 1, 1999, and ends on or after July 1, 1999, the excise tax due under this act for this accounting period shall be the sum of (1) the excise tax computed under prior excise tax law, multiplied by a fraction, the denominator of which is the number of days in the accounting period and the numerator of which is the number of days from the beginning of the accounting period until and including June 30, 1999; and (2) the excise tax computed under this act, multiplied by a fraction, the denominator of which is the number of days in the accounting period and the numerator of which is the number of days from and including July 1, 1999, until the close of the accounting period.

(e) Notwithstanding any provisions of law to the contrary, a taxpayer subject to the excise tax imposed by this act but who would not have been subject to the excise tax under prior law shall make all quarterly estimated tax payments required by § 67-4-817 that fall due after July 1, 1999, except that no such payment falling due prior to August 31, 1999, shall be required.

(f) Notwithstanding any provisions of law to the contrary, a taxpayer subject to the excise tax imposed by this act that would have been subject to the Tennessee excise tax under prior law shall make all quarterly estimated excise tax payments required by § 67-4-817 that fall due after July 1, 1999.

(g) Notwithstanding any provisions of law to the contrary, a taxpayer subject to the excise tax imposed by this act that has timely made all quarterly estimates required under this section will not be subject to penalty or interest if the total of all such quarterly payments equals at least: (1) seventy-five percent (75%) of the prior law excise tax liability plus the excise tax liability under this act due for the taxpayer's first tax year ended on or after July 1, 1999; or (2) one hundred percent (100%) of the prior law excise tax liability, if any, for the taxpayer's immediately preceding twelve (12) month tax year.

(h) Notwithstanding the provisions of § 67-1-803(a)(2)(A), the commissioner may waive any excise tax penalty imposed on a taxpayer who was not subject to the prior excise tax law and who has failed to register with the department for the excise tax; provided, however, that this provision shall apply only to tax years ending on or after July 1, 1999 and before July 2, 2001.

SECTION 35. Tennessee Code Annotated, Section 67-4-903, is amended by deleting subsections (a), (b) and (c) in their entirety and by substituting instead the following:

(a)(1) Doing business in Tennessee by any taxpayer is hereby declared to be a taxable privilege. The franchise tax imposed by this part is a tax on merchants, peddlers, and privileges as authorized by Article II, Section 28 of the Tennessee Constitution. The tax is an accrued tax and is imposed for the exercise of the specified privilege during the period that coincides with the tax year covered by the return required.

(2) All persons doing business in Tennessee, except those having not-for-profit status, shall, without exception other than as provided herein, pay to the commissioner of revenue annually a privilege tax in addition to all other taxes, the rate and measure of which are hereinafter set forth. The tax shall be paid for the privilege of engaging in business in this state and shall be in addition to all other taxes levied by any other statute.

(b) Every such taxpayer shall, as a recompense for the protection of its local activities and as compensation for the benefits it receives from doing business in Tennessee, pay the tax imposed by this part.

(c) The tax imposed by this part shall apply to every taxpayer whose business is being conducted by a receivership or trusteeship appointed by any court of competent jurisdiction, and shall continue to accrue until such time as, in the case of an entity, such entity has been actually and legally dissolved or withdrawn from this state.

SECTION 36. Tennessee Code Annotated, Section 67-4-904, is amended by deleting the section in its entirety and substituting instead the following:

(a) The privilege tax hereby imposed shall be a tax of twenty-five cents (25¢) per one hundred dollars (\$100), or major fraction thereof, of a taxpayer's net worth, shown by its books and records, kept in accordance with generally accepted accounting principles, at the close of the tax year covered by the required return.

(b) For purposes of this section, "net worth" is defined as the difference between the value of a taxpayer's total assets less such taxpayer's total liabilities as such assets and liabilities are shown on the taxpayer's balance sheet kept in accordance with generally accepted accounting principles for the tax year covered by the required return. Proper reductions of asset and liability accounts used to determine net worth for franchise tax purposes will be allowed if they are in accordance with generally accepted accounting principles. Treasury stock shall not be considered a part of the net worth of a corporation.

SECTION 37. Tennessee Code Annotated, Section 67-4-906(a), is amended by adding the following language at the end of subdivision (1):

In the case of a sole proprietorship, property owned or used shall include only the property, or portion thereof, actually used in the business of such proprietorship.

SECTION 38. Tennessee Code Annotated, Section 67-4-906(a), is further amended in subdivisions (2), (3), (5) and (6)(A) by deleting the word "corporation" and substituting instead the word "taxpayer".

SECTION 39. Tennessee Code Annotated, Section 67-4-906(a), is further amended in subdivision (6)(B) by deleting the word "corporate" and substituting the words "the taxpayer's".

SECTION 40. Tennessee Code Annotated, Section 67-4-906(a), is further amended by deleting subdivision (7) in its entirety and by substituting instead the following:

(7) For purposes of this section, "property" shall not include a taxpayer's share of any specific property in a partnership or limited liability company in which such taxpayer has a partnership or membership interest.

SECTION 41. Tennessee Code Annotated, Section 67-4-906(a), is further amended in subdivision (8) by deleting the word "corporate" wherever it appears and substituting instead the words "the taxpayer's" and by deleting the word "corporation's" wherever it appears and substituting instead the word "taxpayer's".

SECTION 42. Tennessee Code Annotated, Section 67-4-908(c)(2)(A), is amended by deleting the words "business' franchise tax liability" and substituting instead the words "taxpayer's franchise tax liability"

SECTION 43. Tennessee Code Annotated, Section 67-4-908(c)(2)(C), is amended by deleting the language "A business shall file" and by substituting the language "A taxpayer shall file".

SECTION 44. Tennessee Code Annotated, Section 67-4-909, is amended by deleting the section in its entirety and substituting instead the following:

(a) In the case of taxpayers doing business in Tennessee and elsewhere, the measure of the tax as hereinabove set forth shall be apportioned to Tennessee for the purpose of taxation in the manner set forth in this part.

(b) For purposes of allocation and apportionment of net worth under this part, a taxpayer is taxable in another state if:

(1) In that state it is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(c) Nonbusiness sales shall not be included in the numerator or denominator of any apportionment formula.

SECTION 45. Tennessee Code Annotated, Section 67-4-910, is amended by deleting subsections (a) and (b) in their entirety and substituting instead the following:

(a) Except as may otherwise be provided in this part, the net worth of a taxpayer doing business both within and without Tennessee shall be apportioned to this state by multiplying such values by a fraction, the numerator of which shall be the property factor plus the payroll factor plus twice the sales factor and the denominator of which shall be four (4).

(b)(1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property, excluding exempt inventory as defined in § 67-4-906(a)(8), owned or rented and used in this state during the tax period, and the denominator of which is the average value of all the taxpayer's real and tangible personal property, excluding exempt inventory, owned or rented and used during the tax period.

(2) For purposes of this section, "property" shall not include not include a taxpayer's share of any specific property in a partnership or limited liability company in which such taxpayer has a partnership or membership interest. In the case of a sole

proprietorship, "property" shall not include any property or portion thereof not actually used in the proprietorship's business.

SECTION 46. Tennessee Code Annotated, Section 67-4-910(e), is amended by deleting subdivision (3) in its entirety and by substituting instead the following:

(3) For purposes of this section, "compensation" shall not include a taxpayer's share of any specific compensation of a partnership or limited liability company in which such taxpayer has a partnership or membership interest.

SECTION 47. Tennessee Code Annotated, Section 67-4-910(g), is amended by deleting subdivision (2) in its entirety and by substituting instead the following:

(2) For purposes of this section, "total sales" shall not include a taxpayer's share of any specific sales of a partnership or limited liability company in which such taxpayer has a partnership or membership interest.

SECTION 48. Tennessee Code Annotated, Section 67-4-910, is amended by adding a new subdivision (j) as follows:

(j) Notwithstanding any provision of law other than §67-4-911 to the contrary, any person doing business in Tennessee, who licenses the use of patents, trademarks, tradenames, copyrights, or know-how, or other intellectual property to another person in Tennessee, and who is paid royalties or other income based on the sale of products or other activity in Tennessee by the licensee, shall source such income to Tennessee for purposes of this apportionment formula sales factor.

SECTION 49. Tennessee Code Annotated, Section 67-4-911, is amended by deleting subsections (a) through (d) in their entirety and substituting instead the following:

(a) If the tax computation, allocation or apportionment provisions of this part do not fairly represent the extent of the taxpayer's business activity in this state, or the taxpayer's net worth, as adjusted, the taxpayer may petition for, or the department of

revenue through its delegates may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one (1) or more of the formula factors;
- (3) The inclusion of one (1) or more additional apportionment formula factors

which will fairly represent the taxpayer's business activity in this state; or

- (4) The employment of any other method to effectuate an equitable computation, allocation and apportionment of the taxpayer's net worth, as adjusted, that fairly represents the extent of the business entity's activities in Tennessee.

(b) If any factors are excluded from or added to the statutory apportionment formula, an appropriate change shall be made in the number used as the denominator of the fraction.

(c) (1) In any case of two or more persons, organizations, trades or businesses (whether or not incorporated and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the commissioner through delegates may distribute, apportion, or allocate net worth, income, deductions, credits, or allowances between or among such persons, organizations, trades or businesses, if the commissioner determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes, excessive use or abuse of exemptions, or to clearly reflect the net worth of such persons, organizations, trades or businesses. In addition, the commissioner through delegates may require combined reports utilizing a common apportionment formula covering members of an affiliated group of corporations.

(2) The commissioner may disregard any entity created or transaction made which has no business purpose or is created or made with the primary purpose of evading either the federal income tax or the franchise tax.

(3) For purposes of this subsection, "affiliated group" has the same meaning attributed to it by section 1504 of the internal revenue code.

(d) When another method of tax computation, allocation or apportionment as set out above has once been established, it shall continue in effect until changed or discontinued by the department. In the event that the department changes or discontinues a taxpayer's method of tax computation, allocation or apportionment, reasonable notice shall be given to the taxpayer affected and any such change or discontinuation in the method of tax computation, allocation or apportionment shall apply prospectively to the first and subsequent tax periods beginning on or after the date of such notice.

SECTION 50. Tennessee Code Annotated, Section 67-4-912, is amended in subdivision (3) by deleting the word "corporation" and substituting instead the word "taxpayer".

SECTION 51. Tennessee Code Annotated, Section 67-4-914, is amended by deleting each occurrence of the word "corporation" and by substituting instead the word "taxpayer".

SECTION 52. Tennessee Code Annotated, Section 67-4-914(a), is amended by inserting immediately after the words "following data" the language ", if applicable".

SECTION 53. Tennessee Code Annotated, Section 67-4-914(a), is amended in subdivision (1) by inserting immediately after the word "chartered" the words "or organized".

SECTION 54. Tennessee Code Annotated, Section 67-4-915, is amended by deleting the section in its entirety and substituting instead the following:

67-4-915. (a) The franchise tax return shall be filed with the commissioner of revenue on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year. The return must coincide with the accounting period covered by the federal return.

(b) The appropriate tax must be paid to the department of revenue at the time of filing the return.

(c) Additional payments shall be made as follows:

(1) Every person, who has a franchise tax liability of five thousand dollars (\$5,000) or more for the prior tax year or for the current tax year, shall make four equal quarterly estimated franchise tax payments for its current tax year.

(2) The first payment shall be due on the fifteenth day of the fourth month of its taxable year; the second payment on the fifteenth day of the sixth month; the third payment on the fifteenth day of the ninth month; and the final payment on the fifteenth day of the first month of the next succeeding taxable year; and

(d) If there is an underpayment of estimated tax, then there shall be added to the tax for the taxable year a penalty in the amount of five percent (5%) for each month of underpayment or part thereof not to exceed a total of twenty-five percent (25%);

(1) The amount of the underpayment for any quarterly installment shall be the lesser of:

(A) The amount of the installment that would be required to be paid if the estimated tax was equal to the tax for the preceding taxable year, if the year was one of twelve (12) months, less the amount of any installment paid on or before the last date prescribed for payment; or

(B) The amount of the installment that would be required to be paid if the estimated tax was equal to eighty percent (80%) of the tax for the current taxable year, less the amount of any installment paid on or before the last date prescribed for payment;

(2) The period of underpayment shall extend from the date the installment was required to be paid to the earlier of:

(A) The fifteenth day of the fourth month following the close of the taxable year; or

(B) With respect to all or any portion of the underpayment, the date on which all or any portion of the underpayment is paid;

(3) A payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment payable for that date;

(e) An extension of time of six (6) months in which to file the franchise tax return will be granted provided that on or before the original due date of the return, the taxpayer has paid franchise taxes equal to one hundred percent (100%) of the liability for the tax year for which the extension is being requested, and the extension request is made on a form prescribed by the department. Where the taxes paid on or before the original due date of the return do not equal one hundred percent (100%) of the liability for the tax year for which the extension is being requested, or if the return is not filed by the extended due date, penalty as provided by § 67-1-804 and interest as provided by § 67-1-801(a) shall attach as though no extension had been granted.

SECTION 55. Tennessee Code Annotated, Section 67-4-916, is amended by deleting the section in its entirety.

SECTION 56. Tennessee Code Annotated, Section 67-9-917, is amended by deleting the section in its entirety and substituting instead the following:

67-9-917. (a) The commissioner is empowered to certify to the secretary of state the name of any taxpayer which fails or refuses to file any statement or franchise, excise tax return required by this act, or to pay any fee or tax herein required; however, no certification shall be issued until such statement, return, or tax has remained delinquent for a period of ninety (90) days.

(b) At the time of such certification to the secretary of state, the commissioner shall give notice to the taxpayer of the action taken. Thereupon, the charter, certificate of limited partnership, articles of organization or other organizational document of such

taxpayer, as the case may be, or its domestication in Tennessee shall stand as automatically revoked and the secretary of state shall note such revocation upon the secretary of state's records.

(c) At any time after the date of revocation or dissolution, any such organizational document may be reinstated upon the filing of all reports and the payment of all fees, taxes, penalty and interest due the state; provided, that the title has not been taken by another person, and that proof is furnished sufficient to the commissioner that no third party will be injured by such reinstatement, unless such proof has been furnished sufficient to the secretary of state upon requesting reinstatement.

SECTION 57. Tennessee Code Annotated, Section 67-4-918, is amended by deleting the section in its entirety and by substituting instead the following:

Section 67-4-918. The commissioner is empowered and it is the commissioner's duty to collect the tax, together with penalty and interest, levied hereunder from any officer, member, partner, stockholder or employee of a taxpayer entity which has dissolved or has been liquidated at a time when it has refused or failed to pay franchise tax levied under this part, and such officer, member, partner or stockholder has received property belonging to the taxpayer entity, but such collection shall be limited to the value of the property received.

SECTION 58. Tennessee Code Annotated, Title 67, Chapter 4, Part 9, is amended by adding the following as a new section:

67-4-922. (a) This section shall apply only to accounting periods (tax years) ending on or after July 1, 1999, but before June 30, 2000.

(b) A return for the franchise tax imposed by this act is not required for accounting periods ending on or before June 30, 1999.

(c) A taxpayer, not subject to prior franchise tax law, that has an accounting period ending on or after July 1, 1999, shall file its first return for the franchise tax

imposed by this act based on such period. In the event the accounting period begins before July 1, 1999, and ends on or after July 1, 1999, the taxes computed on the return shall be prorated by a ratio, the denominator of which is the number of days in the accounting period and the numerator of which is the number of days from and including July 1, 1999, until the close of the accounting period.

(d) For a taxpayer subject to franchise tax under prior law, in the event the accounting period begins before July 1, 1999, and ends on or after July 1, 1999, the franchise tax due under this act for this accounting period shall be the sum of (a) the tax computed under prior franchise tax law, multiplied by a fraction, the denominator of which is the number of days in the accounting period and the numerator of which is the number of days from the beginning of the accounting period until and including June 30, 1999; and (b) the franchise tax computed under this act, multiplied by a fraction, the denominator of which is the number of days in the accounting period and the numerator of which is the number of days from and including July 1, 1999, until the close of the accounting period.

(e) Notwithstanding any provisions of law to the contrary, taxpayers subject to the franchise tax imposed by this act shall make all quarterly estimated franchise tax payments required by § 67-4-915 that fall due after July 1, 1999, except that no such payment falling due prior to August 31, 1999, shall be required.

(f) Notwithstanding any provisions of law to the contrary, a taxpayer subject to the franchise tax imposed by this act that has timely made all quarterly estimates required under this section will not be subject to penalty or interest if the total of all such quarterly payments equals at least: (1) seventy-five percent (75%) of the prior law franchise tax liability plus the franchise tax liability under this act due for the taxpayer's first tax year ended on or after July 1, 1999; or (2) one hundred percent (100%) of the

prior law franchise tax liability, if any, for the taxpayer's immediately preceding twelve (12) month tax year.

(g) Notwithstanding the provisions of § 67-1-803(a)(2)(A), the commissioner may waive any franchise tax penalty imposed on a taxpayer who was not subject to the prior franchise tax law and who has failed to register with the department for the franchise tax; provided, however, that this provision shall apply only to tax years ending on or after July 1, 1999 and before July 2, 2001.

SECTION 59. Tennessee Code Annotated, Section 67-6-202(a), is amended by deleting the language "six percent (6%)" and substituting instead the language "three percent (3%)".

SECTION 60. Tennessee Code Annotated, Section 67-6-202(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) Notwithstanding any other provision of law to the contrary, a portion of the three percent (3%) sales tax rate, as established and imposed by this act in this section and §§ 67-6-203, 67-6-204, 67-6-205 and 67-6-221, equal to one-half percent (0.5%) shall continue to be dedicated for education purposes until changed by the general assembly. All revenue generated from such portion of the sales tax rate shall be deposited in the state general fund and earmarked for education purposes as provided in § 67-6-103(c)(2).

67-6-203.

SECTION 61. Tennessee Code Annotated, Section 67-6-204, is amended by deleting the language "six percent (6%)" wherever it appears and substituting instead the language "three percent (3%)".

SECTION 62. Tennessee Code Annotated, Section 67-6-204(d), is amended by deleting the subsection in its entirety and substituting instead the following:

(d) Notwithstanding any other provision of law to the contrary, a portion of the three percent (3%) sales tax rate, as established and imposed by this act in this section and §§ 67-6-202, 67-6-203, 67-6-205 and 67-6-221, equal to one-half percent (0.5%) shall continue to be dedicated for education purposes until changed by the general assembly. All revenue generated from such portion of the sales tax rate shall be deposited in the state general fund and earmarked for education purposes as provided in § 67-6-103(c)(2).

SECTION 63. Tennessee Code Annotated, Section 67-6-205(a), is amended by deleting the language "six percent (6%)" and substituting instead the language "three percent (3%)".

SECTION 64. Tennessee Code Annotated, Section 67-6-205(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) Notwithstanding any other provision of law to the contrary, a portion of the three percent (3%) sales tax rate, as established and imposed by this act in this section and §§ 67-6-202, 67-6-204, 67-6-204 and 67-6-221, equal to one-half percent (0.5%) shall continue to be dedicated for education purposes until changed by the general assembly. All revenue generated from such portion of the sales tax rate shall be deposited in the state general fund and earmarked for education purposes as provided in § 67-6-103(c)(2).

SECTION 65. Tennessee Code Annotated, Section 67-6-221(a), is amended by deleting the language "six percent (6%)" and substituting instead the language "three percent (3%)".

SECTION 66. Tennessee Code Annotated, Section 67-6-221(b), is amended by deleting the subsection in its entirety and substituting instead the following:

(b) Notwithstanding any other provision of law to the contrary, a portion of the three percent (3%) sales tax rate, as established and imposed by this act in this section

and §§ 67-6-202, 67-6-203, 67-6-204 and 67-6-205, equal to one-half percent (0.5%) shall continue to be dedicated for education purposes until changed by the general assembly. All revenue generated from such portion of the sales tax rate shall be deposited in the state general fund and earmarked for education purposes as provided in § 67-6-103(c)(2).

SECTION 67. Tennessee Code Annotated, Section 67-6-702(a)(1), is amended by deleting the language "two and three-fourths percent (2 3/4%)" and substituting instead the language "one and three-eighths percent (1 3/8%)".

SECTION 70. In the 1999-2000 fiscal year and thereafter, each municipality and county shall receive in addition to the revenues allocated to such municipality and county under the provisions of Tennessee Code Annotated, Title 6, Chapter 6, an additional sum equal to the amount which would have been received pursuant to such law if the sales and use tax rates had not been reduced by the provisions of this act. Such revenues shall be allocated and distributed in the same manner and at the same time as other sales and use tax revenues are distributed by the state.

SECTION 69. The title of this act is, and may be cited as the "Tennessee Tax Reform Act of 1999".

SECTION 70. This act shall take effect upon becoming a law for the sole purpose of promulgating regulations, the public welfare requiring it. This act shall take effect July 1, 1999, for all other purposes, the public welfare requiring it.